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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 290

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, SUCCESSOR TRUSTEE TO THE EQUITABLE TRUST COMPANY OF NEW YORK, N. Y.,

Petitioner,

vs.

THE CITY OF NORWALK, OHIO,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

TRACY, CHAPMAN & WELLES,
Toledo, Ohio,

MILBANK, TWEED, HOPE & WEBB,
New York, N. Y.,
Solicitors for Petitioner.

THE WILKINSON-GLOAT PRINTING CO., BRIEF AND RECORD PRINTERS
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Supreme Court of the United States:

The Petition of the Chase National Bank of the City of New York, respectfully shows to this Honorable Court:

I.

SUMMARY STATEMENT OF MATTERS INVOLVED

A. Facts and Ultimate Question.

Petitioner is the Trustee under a mortgage given by the Ohio Electric Power Company, an Ohio public utility

corporation, securing $2,600,000.00 of bonds issued by that company. Among the mortgaged properties are franchises owned by the Ohio Electric Power Company to use the streets and public places of the respondent, City of Norwalk, Ohio, for the distribution of electric current for light, heat and power purposes. The rights of petitioner and bondholders represented by it were acquired prior to a suit in quo warranto in the Ohio State Courts at the instance of the respondent City against the mortgagor Power Company, resulting in an ouster decree against the Power Company. Neither Petitioner nor any other representative of the bondholders was a party to the quo warranto case or had any notice of it or opportunity to be heard in it.

The ultimate question is whether Petitioner can and should have a day in court for the determination of its rights as mortgagee of these franchises, and to have its rights in and lien upon the franchises and property of the Ohio Electric Power Company in the City of Norwalk protected against wrongful destruction by the respondent, City of Norwalk.

B. The Judgments Below.

(1) District Court.

The District Court (Judge Hahn) held that the Power Company had a valid and existing franchise, and that Petitioner was entitled to have its interest as mortgagee thereof protected by an injunction restraining the respondent City from interfering by force (theretofore actually used and

further threatened) with the exercise by the Power Company of its franchise rights, and also restraining the respondent City from taking any steps to procure the enforcement of the judgment of ouster, which the City (in the name of the State of Ohio) had obtained against the Power Company, in the state courts of Ohio in the above-mentioned quo warranto action.

(2) Circuit Court of Appeals.

Upon appeal by the respondent City the Circuit Court of Appeals held by a two to one decision (Judge Hicks dissenting, but filing no separate opinion):

(a) That the proceedings in the Federal District Court came within the inhibitions of Judicial Code Section 265 (28 U. S. C., Section 379) in that the effect of the decree was to stay the quo warranto proceedings in the state courts, *notwithstanding the fact that the final decree in the state courts had been entered before this suit was filed.*

(b) That the facts of this case did not bring it within the principles of those cases in which the federal courts may enjoin a party from enforcing a state court judgment.

(c) That the proceedings in the Federal District Court were merely an attempt on the part of petitioner to relitigate the issues theretofore determined by the State Courts as *between the respondent City and the Ohio Electric Power Company.*

The Federal District Court held (contrary to the result in the quo warranto action in the state courts) that

the Ohio Electric Power Company had a valid franchise and that the petitioner had a valid lien thereon. These questions were not passed upon by the Circuit Court of Appeals.

C. Questions Presented.

The following questions are presented:

1. Are the federal courts inhibited by Judicial Code Section 265 from granting an injunction, upon application by the mortgagee of a valid and subsisting public utility franchise, restraining a city from depriving such mortgagee of the benefits of its lien on such franchise, merely because the city has won an ouster decree against the mortgagor Power Company in the state courts in a quo warranto case in which neither the mortgagee nor any bondholder was a party or served with any notice?

2. If the federal courts are not so inhibited, is the mortgagee entitled to receive protection by injunction against the destruction of its property rights in the franchise no matter whether such destruction is to be caused by force or by the city's unconscionable enforcement of the ouster decree of the state courts?

3. Is the mortgagee bound by the decision of the state courts in the quo warranto proceedings, to which neither it nor any bondholder was a party, to the effect that the mortgagor has no franchise, or is the mortgagee entitled to a day in court in a forum of its own selection and to a hearing upon issues deemed pertinent by it with respect

to the existence of such franchises and the rights of the mortgagee therein?

D. Statutes Involved.

The statutes involved in the consideration of the foregoing questions, which are printed in the appendix to the separate brief of petitioner, are:

(a) Upon the subject of the scope of the injunction 36 Stat. 1162, (Section 265 Judicial Code), 28 U. S. C. 379.

(b) Upon the subject as of the nature of quo warranto, G. C. of Ohio, Sections 12303, et seq.

(c) On the subject of nature and extent of the franchise rights, Revised Statutes of Ohio 1880, Sections 3454, 3461, 3471; Revised Statutes of Ohio 1890, Section 8752, 83 Ohio Laws, 143; Revised Statutes of 1890, Section 3471a 84 Ohio Laws 7; Revised Statutes, Section 3471a, as amended by Act of April 21, 1896, 92 Ohio Laws, 204.

II.

REASONS FOR ALLOWANCE OF THE WRIT

Petitioner respectfully asserts:

1. That the decision of the Circuit Court of Appeals for the Sixth Circuit conflicts with the decisions of the United States Supreme Court, other Circuit Courts of Appeals and prior decisions of the Circuit Court of Appeals for the Sixth Circuit in holding: (1) that the injunction granted by the District Court violates Judicial Code Section 265, and (2) that petitioner had failed to show one of

the essential conditions to justify the Federal Courts below in restraining the respondent City from destroying petitioner's property rights by seeking enforcement of the quo warranto decree in the State Courts.

2. That the decision of the Circuit Court of Appeals for the Sixth Circuit constitutes an untenable decision upon an important question of general law and is in conflict with the decisions of this court in holding, that petitioner's bill of complaint must be dismissed without considering the issues as to the nature, extent and ownership of the franchise rights, thus giving conclusive effect to the quo warranto decision as against the petitioner mortgagee, which was not a party to or served in the quo warranto proceedings.

III.

PRAYER

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Sixth Circuit commanding that court to certify and to send to this court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 6126, The City of Norwalk, Ohio, defendant-appellant, vs. The Equitable Trust Company of New York, N. Y., plaintiff-appellee, and that the judgment of said Circuit Court of

Appeals may be reversed by this Honorable Court and that your petitioner may have such other and further relief as to this Honorable Court may seem just and proper.

CHASE NATIONAL BANK OF THE CITY OF NEW YORK.

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